



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

July 9, 2004

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2004-5648

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204832.

The Texas Health and Human Services Commission (the "commission") received two requests for financial reporting information from health plans participating in the Star+Plus program in Harris County. One requestor also asks for the "Marketing, Outreach, UM & QM Proposals" in the Star+Plus bid of Amerigroup, Inc. ("Amerigroup"); you state that the commission does not possess this information. The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Moreover, while a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds, the Act generally does not require a governmental body to obtain information not in its possession or create new information in response to an open records request. See Open Records Decision Nos. 599 (1992), 561 (1990). While you do not raise any exceptions to disclosure on behalf of the commission, you state that release of the information at issue may implicate the proprietary interests of the companies involved: Amerigroup, Evercare, and HMO Blue-Medicaid ("HMO Blue"). Accordingly you state, and provide documentation showing, that you notified the companies of the request and of their right to submit arguments to this office as to why the information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Amerigroup, Evercare, and HMO Blue have not submitted any comments to this office explaining how release of the requested information would affect the companies' proprietary interests. Thus, Amerigroup, Evercare, and HMO Blue have provided us with no basis to conclude that the companies have protected proprietary interests in any of the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). We therefore conclude the commission must release the submitted information to the requestors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 204832

Enc: Submitted documents

c: Mr. Timothy Bahe
Parkland Community Health Plan
2777 Stemmons Freeway, Suite 1750
Dallas, Texas 75207
(w/o enclosures)

Ms. Denise M. Walraed
Strategic Healthcare Initiatives, Inc.
15851 Dallas Parkway, Suite 750
Addison, Texas 75001
(w/o enclosures)

Ms. Martha Alikacem
HMO Blue-Medicaid
901 South Central Expressway
Richardson, Texas 75080
(w/o enclosures)

Mr. Carl Kidd
Evercare
9700 Bissonnet, Suite 2225
Houston, Texas 77036
(w/o enclosures)

Mr. Eric Yoder
Amerigroup, Inc.
2730 North Stemmons Freeway, Suite 608
Dallas, Texas 75207
(w/o enclosures)